

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 20 September 2019

CASE NO.: 2019-FRS-00096

In the Matter of:

DANIEL CUCALON,
Complainant,

v.

NORFOLK SOUTHER RAILWAY CORPORATION,
Respondent.

**ORDER DISMISSING COMPLAINT BASED ON LACK OF JURISDICTION,
BECAUSE COMPLAINANT HAS FILED ACTION IN DISTRICT COURT**

This proceeding arises from a complaint of discrimination filed under the Federal Rail Safety Act (“the FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the “9/11 Act”), Pub. L. 110-53, 121 Stat 266 (Aug. 3, 2007). A formal hearing has not yet been scheduled in this case.

On September 10, 2019, Complainant notified the Court that he filed an action in United States District Court, pursuant to 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114. As Complainant has filed a complaint in District Court based on the same facts that constituted his action before the Office of Administrative Law Judges, jurisdiction in the latter has been divested. *See Stone v. Duke Energy Corp*, 432 F.3d 320 (5th Cir. 2005); *see also Kelly v. Sonic Automotive, Inc.*, ARB No. 08-027 (Dec. 17, 2008). Because the Court no longer has jurisdiction over the instant matter, the claim is hereby **DISMISSED**.

SO ORDERED.

JERRY R. DEMAIO
Administrative Law Judge

Boston, Massachusetts